

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§113.100, 113.120, 113.190, 113.200, 113.290, 113.300, 113.320, 113.330, 113.340, 113.350, 113.380, 113.430, 113.560, 113.610, 113.640, 113.660, 113.670, 113.690, 113.700, 113.710, 113.720, 113.730, 113.750, 113.780, 113.810, 113.860, 113.1040, 113.1090, 113.1130, 113.1300, and 113.1390; and new §§113.450, 113.1190, and 113.1200.

The amendments to §§113.340, 113.380, 113.690, 113.750, 113.780, and 113.1300 are adopted *with changes* to the proposed text as published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5350) and will be republished. The amendments to §§113.100, 113.120, 113.190, 113.200, 113.290, 113.300, 113.320, 113.330, 113.350, 113.430, 113.560, 113.610, 113.640, 113.660, 113.670, 113.700, 113.710, 113.720, 113.730, 113.810, 113.860, 113.1040, 113.1090, 113.1130, and 113.1390; and new §§113.450, 113.1190, and 113.1200 are adopted *without changes* and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rules revise Chapter 113 to incorporate by reference changes that the United States Environmental Protection Agency (EPA) has made to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, under 40 Code of Federal Regulations (CFR) Part 63. The EPA's changes to 40 CFR Part 63 include amendments to a number of existing NESHAPs, the addition of a new NESHAP covering Wool Fiberglass Manufacturing at area sources, and the promulgation of two NESHAP which replaced standards previously vacated by court actions. Adopted Chapter 113

incorporates by reference amendments and additions that the EPA made to the NESHAP under 40 CFR Part 63 as published through August 3, 2016.

The Federal Clean Air Act (FCAA) Amendments of 1990, §112, requires the EPA to develop national technology-based standards for new and existing sources of hazardous air pollutants (HAPs). The compounds which are considered to be HAPs are listed in FCAA, §112(b). These technology-based standards intended to control HAP emissions are commonly called maximum achievable control technology (MACT) and generally available control technology (GACT) standards. The MACT standards are required to be based on the maximum degree of emission control that is achievable, taking into consideration cost and any non-air quality health and environmental impacts and energy requirements. GACT standards reflect a less stringent level of control (relative to MACT) and are intended to be applied to non-major sources of HAPs, known as area sources. The EPA has the option to apply either MACT or GACT to area sources, at their discretion.

The adopted rules incorporate amendments the EPA promulgated to 31 existing MACT and GACT standards for a variety of source categories. Many of the standards covered in this rulemaking were amended by the EPA as a result of FCAA requirements that the EPA periodically conduct risk assessments on each source category and determine if changes are needed to reduce residual risks or address developments in applicable control technology. Some standards were revised by the EPA in order to remove startup, shutdown, and malfunction (SSM)-related affirmative defense provisions which were vacated in *Natural Resources Defense Council v. EPA*, 749 F. 3d 1055 (District of

Columbia, Circuit (D.C. Cir.) 2014). In addition, the EPA finalized new standards for brick and clay manufacturing to replace the 2003 standards vacated in *Sierra Club v. EPA*, 479 F. 3d 875 (D.C. Cir. 2007).

Under federal law, affected industries are required to implement the MACT and GACT standards regardless of whether the commission or the EPA is the agency responsible for implementation. As MACT and GACT standards are promulgated or amended by the EPA, the standards are reviewed by commission staff for compatibility with current commission regulations and policies. The commission then incorporates the standards, as appropriate, into Chapter 113 through formal rulemaking procedures. Unless otherwise noted, all incorporations by reference adopted in this rulemaking are without change (meaning that the standards are incorporated as published in the CFR, with no modifications to the text of the regulation being incorporated). After each MACT or GACT standard or amendment is adopted, the commission will seek formal delegation from the EPA under 40 CFR Part 63, Subpart E, Approval of State Programs and Delegation of Federal Authorities, which implements FCAA, §112(l). Upon delegation, the commission will be responsible for administering and enforcing the MACT or GACT requirements.

The commission incorporates the following amendments that the EPA has made to the 40 CFR Part 63, General Provisions, and the federal MACT and GACT standards previously incorporated into the commission rules, by updating the federal promulgation dates and *Federal Register* (FR) citations stated in the commission rules, as discussed more specifically in the Section by Section Discussion in this preamble. The 34 amended and

new standards, along with their corresponding Chapter 113 sections and original incorporation dates if applicable, are listed in the following table (Figure: 30 TAC Chapter 113--Preamble).

Figure: 30 TAC Chapter 113--Preamble

40 CFR Part 63, Subpart (Chapter 113 Section)	Section Title	Original Incorporation (Commission Adoption)
A (§113.100)	General Provisions	June 25, 1997
G (§113.120)	Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater	June 25, 1997
N (§113.190)	Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks	October 15, 1997
O (§113.200)	Ethylene Oxide Emissions Standards for Sterilization Facilities	October 15, 1997
X (§113.290)	Secondary Lead Smelting	June 25, 1997
Y (§113.300)	Marine Tank Vessel Loading Operations	June 25, 1997
AA (§113.320)	Phosphoric Acid Manufacturing Plants	June 14, 2000
BB (§113.330)	Phosphate Fertilizers Production Plants	June 14, 2000
CC (§113.340)	Petroleum Refineries	October 15, 1997
DD (§113.350)	Off-Site Waste and Recovery Operations	October 7, 1998
GG (§113.380)	Aerospace Manufacturing and Rework Facilities	October 15, 1997
LL (§113.430)	Primary Aluminum Reduction Plants	July 14, 1999
NN (§113.450)	Wool Fiberglass Manufacturing at Area Sources	N/A - New section
YY (§113.560)	Generic Maximum Achievable Control Technology Standards	June 14, 2000
DDD (§113.610)	Mineral Wool Production	June 14, 2000
GGG (§113.640)	Pharmaceuticals Production	July 14, 1999
III (§113.660)	Flexible Polyurethane Foam Production	July 14, 1999
JJJ (§113.670)	Group IV Polymers and Resins	October 7, 1998
LLL (§113.690)	Portland Cement Manufacturing Industry	June 14, 2000

40 CFR Part 63, Subpart (Chapter 113 Section)	Section Title	Original Incorporation (Commission Adoption)
MMM (§113.700)	Pesticide Active Ingredient Production	June 14, 2000
NNN (§113.710)	Wool Fiberglass Manufacturing	June 14, 2000
OOO (§113.720)	Manufacture of Amino/Phenolic Resins	June 14, 2000
PPP (§113.730)	Polyether Polyols Production	June 14, 2000
RRR (§113.750)	Secondary Aluminum Production	June 18, 2003
UUU (§113.780)	Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units	June 18, 2003
XXX (§113.810)	Ferroalloys Production: Ferromanganese and Silicomanganese	June 14, 2000
CCCC (§113.860)	Manufacturing of Nutritional Yeast	June 18, 2003
UUUU (§113.1040)	Cellulose Products Manufacturing	June 18, 2003
ZZZZ (§113.1090)	Reciprocating Internal Combustion Engines	May 25, 2005
DDDDD (§113.1130)	Industrial, Commercial, and Institutional Boilers and Process Heaters Major Sources	July 26, 2013
JJJJ (§113.1190)	Brick and Structural Clay Products Manufacturing	N/A - New section
KKKKK (§113.1200)	Clay Ceramics Manufacturing	N/A - New section
UUUUU (§113.1300)	Coal- and Oil-Fired Electric Utility Steam Generating Units	July 26, 2013
DDDDDD (§113.1390)	Polyvinyl Chloride and Copolymers Production Area Sources	December 5, 2007

The EPA is continually in the process of revising 40 CFR Part 63, MACT and GACT regulations, and the EPA adopted changes to certain standards which were published too recently to be specifically addressed in the proposal documents for this rulemaking. In the proposal preamble, the commission provided notice that in addition to the changes specifically described in the Section by Section Discussion portion of the proposal preamble, the commission would consider the incorporation by reference of any final amendments made by the EPA after the date the revisions to Chapter 113 were proposed.

Accordingly, in this adoption the commission has included certain 2016 amendments to 40 CFR Part 63, Subparts CC, GG, LLL, RRR, UUU, and UUUUU, which were published by the EPA after the proposal documents for this rulemaking were prepared. These recent amendments are generally corrections, clarifications, or updates to compliance dates, and it is administratively more efficient to include these amendments and ensure that Chapter 113, Subchapter C, is as up-to-date as possible, than to address these amendments separately in a later rulemaking. These amendments are discussed further in the appropriate Section by Section Discussion of this preamble.

Section by Section Discussion

§113.100, General Provisions (40 Code of Federal Regulations Part 63, Subpart A)

The commission adopts the amendment to §113.100 by incorporating by reference all amendments to 40 CFR Part 63, Subpart A, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart A, on June 25, 2013 (78 FR 37973); February 27, 2014 (79 FR 11228); March 27, 2014 (79 FR 17340); June 30, 2015 (80 FR 37366); August 19, 2015 (80 FR 50386); September 18, 2015 (80 FR 56700); October 15, 2015 (80 FR 62390); October 26, 2015 (80 FR 65470); December 1, 2015 (80 FR 75178); and December 4, 2015 (80 FR 75817).

The June 25, 2013, amendments to CFR Part 63, Subpart A, revised 40 CFR §63.13(a) to update the mailing address used to submit reports and correspondence to EPA Region VII. Although the change to the EPA Region VII mailing address does not affect states in EPA Region VI such as Texas, it is administratively more efficient to include this

amendment than to specifically exclude it. The February 27, 2014, amendments added Methods 3A and 19 to the list of methods not requiring the use of audit samples in 40 CFR §63.7(c), corrected a reference to a section of Performance Specification 2 in 40 CFR §63.8(f)(6)(iii), and revised 40 CFR §63.14 to arrange the materials that are incorporated by reference in alpha-numeric order. The March 27, 2014, amendments revised 40 CFR §63.14 to incorporate various test methods and reference materials for use with 40 CFR Part 63, Subparts JJJ and PPP. The June 30, 2015, amendments revised 40 CFR §63.14 to incorporate various test methods and reference materials for use with 40 CFR Part 63, Subpart XXX. The August 19, 2015, amendments revised 40 CFR §63.14 to incorporate various test methods and reference materials for use with 40 CFR Part 63, Subparts AA and BB. The September 18, 2015, amendments revised 40 CFR §63.14 to incorporate various test methods and reference materials for use with 40 CFR Part 63, Subpart RRR. The October 15, 2015, amendments revised 40 CFR §63.14 to incorporate various test methods and reference materials for use with 40 CFR Part 63, Subpart LL. The October 26, 2015, amendments revised 40 CFR §63.14 to incorporate various test methods and reference materials for use with 40 CFR Part 63, Subparts JJJJJ and KKKKK. The December 1, 2015, amendments revised 40 CFR §63.14 to incorporate various test methods and reference materials for use with 40 CFR Part 63, Subparts Y, CC, and UUU. The December 4, 2015, amendments revised 40 CFR §63.14 to correct certain paragraph numbering errors which were published as part of the October 26, 2015, amendments to 40 CFR §63.14.

§113.120, Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage

Vessels, Transfer Operations, and Wastewater (40 Code of Federal Regulations Part 63, Subpart G)

The commission adopts the amendment to §113.120 by incorporating by reference all amendments to 40 CFR Part 63, Subpart G, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart G, on February 27, 2014 (79 FR 11228). The February 27, 2014, amendments revised 40 CFR Part 63, Subpart G, to allow the use of Method 316 or Method 8260B in the SW-846 Compendium of Methods to determine HAP concentrations in wastewater streams in 40 CFR §63.144(b)(5)(i).

§113.190, Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 Code of Federal Regulations Part 63, Subpart N)

The commission adopts the amendment to §113.190 by incorporating by reference all amendments to 40 CFR Part 63, Subpart N, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart N, on February 27, 2014 (79 FR 11228). The February 27, 2014, amendments added South Coast Air Quality Management District Method 205.1 as a testing option for measuring total chromium.

§113.200, Ethylene Oxide Emissions Standards for Sterilization Facilities (40 Code of Federal Regulations Part 63, Subpart O)

The commission adopts the amendment to §113.200 by incorporating by reference all amendments to 40 CFR Part 63, Subpart O, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart O, on February 27, 2014 (79 FR 11228). The February 27, 2014, amendments added California Air Resources Board

Method 431 as an alternative to the procedures in 40 CFR §63.365(b) for determining the efficiency at the sterilization chamber vent and corrected an error in a reference to a section in Performance Specification 8.

§113.290, Secondary Lead Smelting (40 Code of Federal Regulations Part 63, Subpart X)

The commission adopts the amendment to §113.290 by incorporating by reference all amendments to 40 CFR Part 63, Subpart X, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart X, on January 3, 2014 (79 FR 367). The January 3, 2014, amendments revised regulatory text to clarify compliance dates and clarify provisions related to monitoring of negative pressure in total enclosures. The amendments also corrected typographical errors in a table listing congeners of dioxins and furans and in the testing requirements for total hydrocarbons.

§113.300, Marine Tank Vessel Loading Operations (40 Code of Federal Regulations Part 63, Subpart Y)

The commission adopts the amendment to §113.300 by incorporating by reference all amendments to 40 CFR Part 63, Subpart Y, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart Y, on February 27, 2014 (79 FR 11228), and December 1, 2015 (80 FR 75178). The February 27, 2014, amendments added Method 25B as an alternative to Method 25A in 40 CFR §63.565(d)(5) for determining the average volatile organic compound (VOC) concentration upstream and downstream of recovery devices, added Method 25B as an alternative method for determining the percent reduction in VOC in 40 CFR §63.565(d)(8), and added Method 25B as an alternative to

Method 25A in determining the baseline outlet VOC concentration in 40 CFR §63.565(g). The February 27, 2014, amendments also added a requirement that Method 25B be validated according to Method 301 in §63.565(d)(10). The December 1, 2015, amendments deleted the exclusion for marine vessel loading operations at petroleum refineries and required small marine vessel loading operations and offshore marine vessel loading operations to use submerged filling.

The commission also adopts the revision to the title of §113.300 to "Marine Tank Vessel Loading Operations" to maintain consistency with the title of the corresponding federal regulation in 40 CFR Part 63, Subpart Y.

§113.320, Phosphoric Acid Manufacturing Plants (40 Code of Federal Regulations Part 63, Subpart AA)

The commission adopts the amendment to §113.320 by incorporating by reference all amendments to 40 CFR Part 63, Subpart AA, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart AA, on August 19, 2015 (80 FR 50386). The August 19, 2015, amendments finalized the EPA's residual risk and technology review for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories. The amendments to 40 CFR Part 63, Subpart AA, included: numeric emission limits for previously unregulated mercury (Hg) and total fluoride emissions from calciners; work practice standards for hydrogen fluoride (HF) emissions from previously unregulated gypsum dewatering stacks and cooling ponds; clarifications to the applicability and monitoring requirements to accommodate process equipment and

technology changes; removal of the exemptions for SSM; adoption of work practice standards for periods of startup and shutdown; and revised recordkeeping and reporting requirements for periods of SSM.

§113.330, Phosphate Fertilizers Production Plants (40 Code of Federal Regulations Part 63, Subpart BB)

The commission adopts the amendment to §113.330 by incorporating by reference all amendments to 40 CFR Part 63, Subpart BB, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart BB, on August 19, 2015 (80 FR 50386). The August 19, 2015, amendments finalized the EPA's residual risk and technology review conducted for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories. The amendments to 40 CFR Part 63, Subpart BB, included: clarifications to applicability and monitoring requirements to accommodate process equipment and technology changes; removal of the exemptions for SSM; adoption of work practice standards for periods of startup and shutdown; and revised recordkeeping and reporting requirements for periods of SSM.

§113.340, Petroleum Refineries (40 Code of Federal Regulations Part 63, Subpart CC)

The commission adopts the amendment to §113.340 by incorporating by reference all amendments to 40 CFR Part 63, Subpart CC, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart CC, on June 20, 2013 (78 FR 37133); December 1, 2015 (80 FR 75178); and July 13, 2016 (81 FR 45232). The June 20, 2013, amendments revised the standards for heat exchange systems to include an

alternative monitoring option that would allow owners and operators at existing sources to monitor quarterly instead of monthly. The June 20, 2013, amendments also revised the definition of heat exchange system to clarify the applicability of monitoring and repair provisions for individual heat exchangers within the heat exchange system. Finally, the June 20, 2013, amendments provided for monitoring at an aggregated location for once-through cooling water heat exchange systems, provided that the combined cooling water flow rate at the monitoring location does not exceed 40,000 gallons per minute.

The December 1, 2015, amendments finalized the residual risk and technology review the EPA conducted for the Petroleum Refinery source categories regulated under Refinery MACT 1 (40 CFR Part 63, Subpart CC) and Refinery MACT 2 (40 CFR Part 63, Subpart UUU). These amendments included expanded storage vessel emission control requirements, new provisions to require and support fenceline monitoring for benzene emissions, and revised standards for decoking operations and flares used as pollution control devices. The amendments also included work practice standards for minimizing emissions from pressure relief devices (PRDs), emergency flaring events, and maintenance work on process equipment containing HAP or VOC. The July 13, 2016, amendments adjusted the compliance date for requirements that apply to maintenance vents during periods of startup, shutdown, maintenance, or inspection for sources constructed or reconstructed on or before June 30, 2014; amended the compliance dates for requirements that apply during startup, shutdown, or hot standby for fluid catalytic cracking units (FCCUs) and startup and shutdown for sulfur recovery units (SRU) constructed or reconstructed on or before June 30, 2014; and made various technical

corrections and clarifications to the rule.

§113.350, Off-Site Waste and Recovery Operations (40 Code of Federal Regulations Part 63, Subpart DD)

The commission adopts the amendment to §113.350 by incorporating by reference all amendments to 40 CFR Part 63, Subpart DD, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart DD, on March 18, 2015 (80 FR 14248). The March 18, 2015, amendments finalized the EPA's residual risk and technology review conducted for the Off-Site Waste and Recovery Operations source category. These amendments revised storage tank requirements to require increased control of emissions for tanks in a specific size range that also contain material above a specified vapor pressure, and revised equipment leak requirements to remove the option to comply with 40 CFR Part 61, Subpart V, instead of 40 CFR Part 63, Subpart H. The amendments also revised the standards to eliminate the SSM exemption, so that the standards in this rule apply at all times. In addition, the March 18, 2015, amendments added requirements for reporting of performance testing through the Electronic Reporting Tool (ERT); revised routine maintenance provisions; clarified provisions pertaining to open-ended valves and lines; added monitoring requirements for PRDs; and clarified provisions for certain performance test methods and procedures.

§113.380, Aerospace Manufacturing and Rework Facilities (40 Code of Federal Regulations Part 63, Subpart GG)

The commission adopts the amendment to §113.380 by incorporating by reference all

amendments to 40 CFR Part 63, Subpart GG, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart GG, on February 27, 2014 (79 FR 11228); December 7, 2015 (80 FR 76152); and August 3, 2016 (81 FR 51114). The February 27, 2014, amendments removed an incorrect reference to the location of Method 319 in 40 CFR §63.750(o). The December 7, 2015, amendments finalized the EPA's residual risk and technology review conducted for this source category. The December 7, 2015, amendments added limitations to reduce organic and inorganic emissions of HAP from specialty coating operations; removed exemptions for periods of SSM so that affected units will be subject to the emission standards at all times; and revised provisions to address recordkeeping and reporting requirements applicable to SSM. The December 7, 2015, amendments also added a requirement to report performance testing through the EPA's Compliance and Emissions Data Reporting Interface (CEDRI), and revised rule language to clarify applicability and compliance demonstration provisions. The August 3, 2016, direct final amendments revised 40 CFR Part 63, Subpart GG, to clarify the compliance date for the handling and storage of waste.

§113.430, Primary Aluminum Reduction Plants (40 Code of Federal Regulations Part 63, Subpart LL)

The commission adopts the amendment to §113.430 by incorporating by reference all amendments to 40 CFR Part 63, Subpart LL, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart LL, on October 15, 2015 (80 FR 62390). The October 15, 2015, amendments finalized the EPA's residual risk and technology review conducted for the Primary Aluminum Production source category.

These amendments included technology-based standards and work practice standards reflecting performance of MACT, and related monitoring, reporting, and testing requirements for several previously unregulated HAPs from various emissions sources. The amendments also finalized new and revised emission standards for certain HAP emissions from potlines using the Soderberg technology, added a requirement for electronic reporting of compliance data, and eliminated the exemptions for periods of SSM.

§113.450, Wool Fiberglass Manufacturing at Area Sources (40 Code of Federal Regulations Part 63, Subpart NN)

The commission adopts the amendment to §113.450, which would incorporate by reference the final promulgated rules in 40 CFR Part 63, Subpart NN, adopted by the EPA on July 29, 2015 (80 FR 45280). This GACT standard applies to facilities which manufacture wool fiberglass that are area sources. HAPs emitted from these facilities include chromium compounds, formaldehyde, methanol, and phenol.

§113.560, Generic Maximum Achievable Control Technology Standards (40 Code of Federal Regulations Part 63, Subpart YY)

The commission adopts the amendment to §113.560 by incorporating by reference all amendments to 40 CFR Part 63, Subpart YY, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart YY, on October 8, 2014 (79 FR 60898). The October 8, 2014, amendments finalized the EPA's residual risk and technology review conducted for the Acrylic and Modacrylic Fibers Production,

Amino/Phenolic Resins Production and Polycarbonate Production source categories. The amendments revised the standards to require facilities to comply with the leak detection and repair requirements of 40 CFR Part 63, Subpart UU, rather than 40 CFR Part 63, Subpart TT, with the exception of connectors in gas and vapor service and in light liquid service. The amendments also established standards for previously unregulated HAP emissions from spinning lines that use a spin dope produced from a solution polymerization process at existing facilities. Finally, the amendments revised requirements for PRDs, revised reporting requirements to provide for electronic reporting of certain performance test information, and eliminated the SSM exemption.

§113.610, Mineral Wool Production (40 Code of Federal Regulations Part 63, Subpart DDD)

The commission adopts the amendment to §113.610 by incorporating by reference all amendments to 40 CFR Part 63, Subpart DDD, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart DDD, on July 29, 2015 (80 FR 45280). The July 29, 2015, amendments finalized the EPA's residual risk and technology reviews conducted for the Mineral Wool Production and Wool Fiberglass Manufacturing source categories. The amendments to 40 CFR Part 63, Subpart DDD, included the removal of formaldehyde as a surrogate for phenol and methanol and the removal of carbon monoxide as a surrogate for carbonyl sulfide (COS). The amendments also revised cupola emission limits for COS, hydrochloric acid (HCl), and HF and finalized emission limits for formaldehyde, methanol, and phenol for bonded lines. In addition, the amendments allowed the use of EPA Methods 26A and 320 for measuring concentrations of HCl and HF, revised various performance testing requirements, added requirements

for reporting of performance testing through the ERT, and added several definitions to clarify terminology used in the standards. These amendments also eliminated the SSM exemption and established work practice standards for periods of startup and shutdown.

§113.640, Pharmaceuticals Production (40 Code of Federal Regulations Part 63, Subpart GGG)

The commission adopts the amendment to §113.640 by incorporating by reference all amendments to 40 CFR Part 63, Subpart GGG, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart GGG, on February 27, 2014 (79 FR 11228). The February 27, 2014, amendments revised the 40 CFR §63.1251 definition of process vent to allow Method 320 as an alternative to Method 18 for demonstrating that a vent is not a process vent.

§113.660, Flexible Polyurethane Foam Production (40 Code of Federal Regulations Part 63, Subpart III)

The commission adopts the amendment to §113.660 by incorporating by reference all amendments to 40 CFR Part 63, Subpart III, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart III, on August 15, 2014 (79 FR 48073). The August 15, 2014, amendments finalized the EPA's residual risk and technology review conducted for the Flexible Polyurethane Foam (FPUF) Production source category. The amendments added a prohibition on the use of HAP or HAP-based products as auxiliary blowing agents for all slabstock FPUF production operations, eliminated the SSM exemption so that the standards apply at all times, added

requirements for electronic reporting of performance testing through the ERT, clarified the leak detection methods allowed for diisocyanate storage vessels at slabstock foam production facilities, and added a schedule for delay of leak repairs for valves and connectors.

§113.670, Group IV Polymers and Resins (40 Code of Federal Regulations Part 63, Subpart JJJ)

The commission adopts the amendment to §113.670 by incorporating by reference all amendments to 40 CFR Part 63, Subpart JJJ, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart JJJ, on March 27, 2014 (79 FR 17340). The March 27, 2014, amendments finalized the EPA's residual risk and technology review conducted for the Group IV Polymers and Resins source category. The amendments added language to require electronic reporting of performance test results, added a requirement to monitor PRDs in organic HAP service, and eliminated the SSM exemption so that emission standards would apply at all times. In addition, the amendments addressed certain emissions that were not previously regulated, provided for alternative compliance demonstration methods during periods of startup and shutdown, and lifted the stay of requirements for process contact cooling towers at existing sources in one Polymers and Resins subcategory.

§113.690, Portland Cement Manufacturing Industry (40 Code of Federal Regulations Part 63, Subpart LLL)

The commission adopts the amendment to §113.690 by incorporating by reference all

amendments to 40 CFR Part 63, Subpart LLL, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart LLL, on July 27, 2015 (80 FR 44772) and July 25, 2016 (81 FR 48356). The July 27, 2015, amendments clarified the definitions of rolling average, operating day, and run average; restored a table of emission limits which apply until September 9, 2015; provided a scaling alternative for sources that have a wet scrubber, tray tower, or dry scrubber relative to the HCl compliance demonstration; added a temperature parameter to the startup and shutdown requirements; and clarified language related to span values for Hg and HCl measurements. The amendments also removed an affirmative defense provision from the rule which was vacated by a court action and corrected a number of typographical and grammatical errors and errors in various dates. The July 25, 2016, amendments provided a temporary compliance alternative for sources that would otherwise be required to use an HCl continuous emissions monitoring system to demonstrate compliance with the HCl emissions limit, and restored regulatory text requiring the reporting of clinker production and kiln feed rates that was inadvertently deleted from the standard.

§113.700, Pesticide Active Ingredient Production (40 Code of Federal Regulations Part 63, Subpart MMM)

The commission adopts the amendment to §113.700 by incorporating by reference all amendments to 40 CFR Part 63, Subpart MMM, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart MMM, on March 27, 2014 (79 FR 17340). The March 27, 2014, amendments finalized the EPA's residual risk and technology review conducted for this source category. The amendments clarified that

sources may submit a precompliance plan to request alternative compliance options after the compliance date has passed or construction or preconstruction applications have already been submitted. The amendments also clarified provisions for packed-bed scrubbers in 40 CFR §63.1366(b)(1)(ii), and revised the definition for "pesticide active ingredient." In addition, the amendments added language to require electronic reporting of performance test results, added a requirement to monitor PRDs in organic HAP service, and eliminated the SSM exemption so that emissions standards would apply at all times. The amendments also revised Table 1 of 40 CFR Part 63, Subpart MMM, (the General Provisions applicability table), in several respects relating to SSM requirements.

§113.710, Wool Fiberglass Manufacturing (40 Code of Federal Regulations Part 63, Subpart NNN)

The commission adopts the amendment to §113.710 by incorporating by reference all amendments to 40 CFR Part 63, Subpart NNN, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart NNN, on July 29, 2015 (80 FR 45280). The July 29, 2015, amendments finalized the EPA's residual risk and technology reviews conducted for the Mineral Wool Production and Wool Fiberglass Manufacturing source categories. The amendments to 40 CFR Part 63, Subpart NNN, included revised chromium and particulate matter (PM) emission limits for certain sources, new pollutant-specific emissions limits for HAPs such as methanol and phenol that were previously regulated under the surrogate compound formaldehyde, and established new emission limits for certain other HAPs that were previously unregulated. The amendments also finalized first-time GACT standards for gas-fired glass-melting

furnaces at area sources, added requirements for electronically reporting performance test results through the ERT, eliminated the SSM exemption, and established revised work practice standards for periods of startup and shutdown.

§113.720, Manufacture of Amino/Phenolic Resins (40 Code of Federal Regulations Part 63, Subpart OOO)

The commission adopts the amendment to §113.720 by incorporating by reference all amendments to 40 CFR Part 63, Subpart OOO, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart OOO, on October 8, 2014 (79 FR 60898). The October 8, 2014, amendments finalized the EPA's residual risk and technology reviews conducted for the Acrylic and Modacrylic Fibers Production, Amino/Phenolic Resins Production (APR) and Polycarbonate Production source categories. The amendments to 40 CFR Part 63, Subpart OOO, revised the applicability of the APR new source MACT standards to include smaller capacity storage vessels and storage vessels containing liquids with lower vapor pressures. The amendments also clarified that pressure releases from PRDs in organic HAP service to the atmosphere are prohibited and specified provisions for monitoring PRDs in HAP service. In addition, the amendments established standards for certain previously-unregulated HAP emissions from storage vessels and continuous process vents at existing facilities. The amendments also added requirements for electronically reporting performance test results through the ERT and eliminated the SSM exemption.

§113.730, Polyether Polyols Production (40 Code of Federal Regulations Part 63, Subpart

PPP)

The commission adopts the amendment to §113.730 by incorporating by reference all amendments to 40 CFR Part 63, Subpart PPP, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart PPP, on March 27, 2014 (79 FR 17340). The March 27, 2014, amendments finalized the EPA's residual risk and technology review conducted for this source category. The amendments to 40 CFR Part 63, Subpart PPP, clarified that pressure releases from PRDs in organic HAP service to the atmosphere are prohibited, and specified provisions for monitoring PRDs in HAP service. The amendments also clarified requirements for precompliance reports, added requirements for electronically reporting performance test results through the ERT, eliminated the SSM exemption, and revised associated SSM requirements.

§113.750, Secondary Aluminum Production (40 Code of Federal Regulations Part 63, Subpart RRR)

The commission adopts the amendment to §113.750 by incorporating by reference all amendments to 40 CFR Part 63, Subpart RRR, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart RRR, on February 27, 2014 (79 FR 11228); September 18, 2015 (80 FR 56700); and June 13, 2016 (81 FR 38085). The February 27, 2014, amendments added Method 26 as an alternative to Method 26A for determining HCl concentration. The September 18, 2015, amendments finalized the EPA's residual risk and technology review conducted for this source category. These amendments revised rule language to clarify applicability of certain rule provisions to area sources and added or revised certain technical definitions. The amendments also

provided criteria for changing furnace classifications and established an allowed frequency of such changes. In addition, the amendments eliminated the SSM exemption and revised associated SSM requirements, revised various provisions relating to performance testing, and added requirements for electronically reporting performance test results through the ERT. The June 13, 2016, direct final amendments corrected inadvertent errors, clarified requirements for initial performance tests and submittal of malfunction reports, provided an additional option for new round top furnaces to account for unmeasured emissions during compliance testing, and clarified what constitutes a change in furnace operating mode. The direct final rule also updated website addresses for the EPA's ERT and CEDRI.

§113.780, Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (40 Code of Federal Regulations Part 63, Subpart UUU)

The commission adopts the amendment to §113.780 by incorporating by reference all amendments to 40 CFR Part 63, Subpart UUU, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart UUU, on December 1, 2015 (80 FR 75178) and July 13, 2016 (81 FR 45232). The December 1, 2015, amendments finalized the EPA's residual risk and technology review conducted for this source category. These amendments removed the incremental PM limit when burning liquid or solid fuels and finalized a 20% opacity limit based on a three-hour average. The amendments also added an option for bag leak detectors to be used as an alternative to a continuous opacity monitoring system, and added requirements for daily checks of the air or water pressure to spray nozzles on wet scrubbers. In addition, the amendments required periodic FCCU

performance testing at a frequency of once every five years and incorporated enhanced flare operational requirements directly into the Refinery MACT. The amendments also eliminated the SSM exemption and revised associated SSM requirements, established alternative emission standards for certain startup and shutdown situations, and added requirements for reporting performance test results through the ERT. The July 13, 2016, amendments adjusted the compliance date for requirements that apply to maintenance vents during periods of startup, shutdown, maintenance, or inspection for sources constructed or reconstructed on or before June 30, 2014; amended the compliance dates for requirements that apply during startup, shutdown, or hot standby for FCCUs and startup and shutdown for SRUs constructed or reconstructed on or before June 30, 2014; and made various technical corrections and clarifications to the rule.

§113.810, Ferroalloys Production: Ferromanganese and Silicomanganese (40 Code of Federal Regulations Part 63, Subpart XXX)

The commission adopts the amendment to §113.810 by incorporating by reference all amendments to 40 CFR Part 63, Subpart XXX, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart XXX, on June 30, 2015 (80 FR 37366). The June 30, 2015, amendments finalized the EPA's residual risk and technology review conducted for this source category. The amendments revised PM standards for electric arc furnaces, metal oxygen refining processes, and crushing and screening operations and expanded requirements to control process fugitive emissions from furnace operations, tapping, casting, and other processes. The amendments also finalized opacity limits and established required monitoring using a digital camera opacity

technique in lieu of Method 9. The amendments also finalized emission standards for certain previously unregulated HAPs (formaldehyde, HCl, Hg, and polycyclic aromatic hydrocarbons). In addition, the amendments eliminated the SSM exemption and added requirements for reporting performance test results through the ERT.

§113.860, Manufacturing of Nutritional Yeast (40 Code of Federal Regulations Part 63, Subpart CCCC)

The commission adopts the amendment to §113.860 by incorporating by reference all amendments to 40 CFR Part 63, Subpart CCCC, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart CCCC, on February 27, 2014 (79 FR 11228). The February 27, 2014, amendments revised Table 2 of 40 CFR Part 63, Subpart CCCC, to delete the requirement to use Methods 1, 2, 3, and 4 when measuring VOC by Method 25A. The commission also adopts the revision to this section title for consistency with other sections in this subchapter, by using the full term "Code of Federal Regulations" rather than the acronym "CFR."

§113.1040, Cellulose Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart UUUU)

The commission adopts the amendment to §113.1040 by incorporating by reference all amendments to 40 CFR Part 63, Subpart UUUU, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart UUUU, on February 27, 2014 (79 FR 11228). The February 27, 2014, amendments revised Table 4 of 40 CFR Part 63, Subpart UUUU, to allow Method 320 as an alternative to Method 18 for determining

control device efficiency.

§113.1090, Reciprocating Internal Combustion Engines (40 Code of Federal Regulations Part 63, Subpart ZZZZ)

The commission adopts the amendment to §113.1090 by incorporating by reference all amendments to 40 CFR Part 63, Subpart ZZZZ, since this section was last amended.

During this period, the EPA amended 40 CFR Part 63, Subpart ZZZZ, on March 6, 2013 (78 FR 14457), and February 27, 2014 (79 FR 11228). The March 6, 2013, amendments corrected several typographical errors in Table 2c of 40 CFR Part 63, Subpart ZZZZ. The February 27, 2014, amendments revised Table 4 of 40 CFR Part 63, Subpart ZZZZ, to clarify that a heated probe is not necessary when using ASTM D6522 to measure oxygen or carbon dioxide concentrations and deleted the requirement to use Method 1 or 1A when testing gaseous emissions from engines with smaller ducts.

§113.1130, Industrial, Commercial, and Institutional Boilers and Process Heaters Major Sources (40 Code of Federal Regulations Part 63, Subpart DDDDD)

The commission adopts the amendment to §113.1130 by incorporating by reference all amendments to 40 CFR Part 63, Subpart DDDDD, since this section was last amended.

During this period, the EPA amended 40 CFR Part 63, Subpart DDDDD, on November 20, 2015 (80 FR 72790). The November 20, 2015, amendments revised the definitions of startup and shutdown and revised the work practice standards which apply during these periods. The amendments also removed affirmative defense provisions which applied during periods of malfunction. In addition, the amendments included a number of

technical corrections, clarifications, and corrections of various typographical errors.

§113.1190, Brick and Structural Clay Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart JJJJJ)

The commission adopts new §113.1190 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart JJJJJ, adopted by the EPA on October 26, 2015 (80 FR 65470). This MACT standard applies to brick and structural clay production facilities which are major sources. Brick and structural clay product manufacturing facilities typically process raw clay and shale, form the processed materials into bricks or shapes, and dry and fire the bricks or shapes. HAPs emitted from these facilities include Hg, non-Hg metal HAPs, and acid gases such as HF, hydrogen chloride, and chlorine. The standards adopted by the EPA on October 26, 2015, that are incorporated into §113.1190, were developed in response to a 2007 court action which vacated the original brick and structural clay MACT standards adopted by the EPA in 2003 (*Sierra Club v. EPA*, 479 F.3d 875, 876 (D.C. Cir. 2007)).

§113.1200, Clay Ceramics Manufacturing (40 Code of Federal Regulations Part 63, Subpart KKKKK)

The commission adopts new §113.1200 by incorporating by reference the final promulgated rules in 40 CFR Part 63, Subpart KKKKK, adopted by the EPA on October 26, 2015 (80 FR 65470), as amended December 4, 2015 (80 FR 75817). This MACT standard applies to clay production facilities which are major sources. The Clay Ceramics Manufacturing source category includes facilities that manufacture pressed floor tile,

pressed wall tile, and other pressed tile; or sanitaryware such as toilets and sinks. HAPs emitted from these facilities include Hg, non-Hg metal HAPs, dioxins, furans, and acid gases such as HF, HCl, and chlorine. The standards adopted by the EPA on October 26, 2015, that are incorporated into §113.1200, were developed in response to a 2007 court action which vacated the original clay ceramics manufacturing MACT standard adopted by the EPA in 2003 (*Sierra Club v. EPA*, 479 F.3d 875, 876 (D.C. Cir. 2007)). The December 4, 2015, amendments corrected minor typographical errors in the standards.

§113.1300, Coal- and Oil-Fired Electric Utility Steam Generating Units (40 Code of Federal Regulations Part 63, Subpart UUUUU)

The commission adopts the amendment to §113.1300 by incorporating by reference all amendments to 40 CFR Part 63, Subpart UUUUU, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart UUUUU, on November 19, 2014 (79 FR 68777); March 24, 2015 (80 FR 15510); and April 6, 2016 (81 FR 20172). The November 19, 2014, amendments revised numerous startup and shutdown-related provisions, including clarifications to certain definitions relating to startup and shutdown, and finalized an alternative work practice compliance option for startup and shutdown periods. The March 24, 2015, amendments required owners or operators of affected sources to submit certain required emissions and compliance reports to the EPA through the Emissions Collection and Monitoring Plan System Client Tool, and the amendments temporarily suspended the requirement for owners or operators of affected sources to submit certain reports using the CEDRI. The April 6, 2016, amendments made a number of technical corrections and clarifications, and removed affirmative defense

provisions associated with malfunctions.

§113.1390, Polyvinyl Chloride and Copolymers Production Area Sources (40 Code of Federal Regulations Part 63, Subpart DDDDDD)

The commission adopts the amendment to §113.1390 by incorporating by reference all amendments to 40 CFR Part 63, Subpart DDDDDD, since this section was last amended. During this period, the EPA amended 40 CFR Part 63, Subpart DDDDDD, on February 4, 2015 (80 FR 5938). The February 4, 2015, amendments withdrew the total non-vinyl chloride organic HAP process wastewater emission standards for new and existing polyvinyl chloride and copolymers area sources.

Final Regulatory Impact Analysis Determination

The commission reviewed the rulemaking in light of the Regulatory Impact Analysis (RIA) requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a major environmental rule as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a RIA.

A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of these adopted rules is to adopt

amendments to a number of existing NESHAPs incorporated into Chapter 113 and adopt incorporations of three NESHAPs not yet incorporated into Chapter 113, two of which replaced standards previously vacated by court actions. The NESHAPs are promulgated by the EPA for source categories mandated by 42 United States Code (USC), §7412 and are required to be included in operating permits by 42 USC, §7661a. These NESHAPs are technology-based standards commonly referred to as MACT or GACT standards which the EPA develops to regulate emissions of HAPs as required under the FCAA. Certain sources of HAPs will be affected and stationary sources are required to comply with federal standards whether or not the commission adopts the standards or takes delegation from the EPA. As discussed in the Fiscal Note of the rulemaking proposal, the adopted rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with federal MACT or GACT standards on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Additionally, the rulemaking does not meet any of the four applicability criteria for requiring a RIA for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule

solely under the general powers of the agency instead of under a specific state law.

Under 42 USC, §7661a, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including NESHAPs, which are required under 42 USC, §7412. Similar to requirements in 42 USC, §7410, regarding the requirement to adopt and implement plans to attain and maintain the National Ambient Air Quality Standards, states are not free to ignore requirements in 42 USC, §7661a, and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill 633 (SB 633 or bill) during the 75th Texas Legislature, 1997. The intent of SB 633 was to require agencies to conduct a RIA of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the

bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission in order to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the adopted rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA, and in fact, creates no additional impacts since the adopted rules do not modify the federal NESHAP, but are incorporations by reference, which do not change the federal requirements.

For these reasons, the adopted rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law.

The commission has consistently applied this construction to its rules since this statute

was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially un-amended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), writ denied with per curiam opinion respecting another issue, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ) superseded by statute on another point of law, Texas Tax Code, §112.108, Other Actions Prohibited, as recognized in, *First State Bank of Dumas v. Sharp*, 863 S.W. 2d 81, 83, (Tex. App. Austin 1993, no writ.); *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Berry v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, pet. denied); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978))

The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (See Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas

Government Code, §2001.0225.

The adopted rules implement requirements of the FCAA. The NESHAP standards being incorporated into state law are federal technology-based standards that are required by 42 USC, §7412, required to be included in permits under 42 USC, §7661a, adopted by reference without modification or substitution, and will not exceed any standard set by state or federal law. These rules are not an express requirement of state law. The adopted rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the EPA delegates the NESHAP to Texas in accordance with the delegation procedures codified in 40 CFR Part 63. The amendments were not developed solely under the general powers of the agency, but are authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble, including Texas Health and Safety Code, §§382.011, 382.012, and 382.017. Therefore, this adopted rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter

2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply.

Under Texas Government Code, §2007.002(5), taking means: "(A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect."

The commission completed a takings impact analysis for the adopted rulemaking action under the Texas Government Code, §2007.043. The specific intent of these adopted rules is to adopt amendments to a number of existing NESHAPs incorporated into Chapter 113 and adopt incorporations of three NESHAPs not yet incorporated into Chapter 113. The NESHAPs are promulgated by the EPA for source categories mandated by 42 USC, §7412 and required to be included in operating permits by 42 USC, §7661a. These NESHAPs are

technology-based standards commonly referred to as MACT or GACT standards which the EPA develops to regulate emissions of HAPs as required under the FCAA. Certain sources of HAPs will be affected and stationary sources are required to comply with federal standards whether or not the commission adopts the standards or takes delegation from the EPA. The adopted rules do not create any additional burden on private real property. Under federal law, the affected industries will be required to comply with the NESHAPs regardless of whether the commission or the EPA is the agency responsible for implementation of the NESHAPs. The adopted rules do not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adoption does not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the adopted rulemaking does not cause a taking under the Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the adopted rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this

adopted rulemaking action is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1), Goals). The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32, Policies for Emission of Air Pollutants). The adopted rules incorporate federal regulations concerning emissions of HAPs from certain industries into Chapter 113, allowing the commission to enforce those standards. This would tend to benefit the environment because it would result in lower emissions of HAPs. Therefore, in accordance with 31 TAC §505.22(e), Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program, the commission affirms that this rulemaking is consistent with CMP goals and policies.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies, and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency of the proposed rules with the CMP during the public comment period. No comments were received.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 113 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. Owners or operators subject to the Federal Operating Permits Program

must, consistent with the revision process in Chapter 122, upon the effective date of the adopted rulemaking, revise their operating permits to include the new Chapter 113 requirements. In addition, owners and operators of area sources should be aware that federal rules require certain area source categories to obtain a federal operating permit.

Public Comment

The commission offered a public hearing on August 18, 2016. The comment period closed on August 22, 2016. No oral or written comments on the proposed rules were received.

**SUBCHAPTER C: NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR
POLLUTANTS FOR SOURCE CATEGORIES (FCAA, §112, 40 CFR PART 63)
§§113.100, 113.120, 113.190, 113.200, 113.290, 113.300, 113.320, 113.330, 113.340,
113.350, 113.380, 113.430, 113.450, 113.560, 113.610, 113.640, 113.660, 113.670,
113.690, 113.700, 113.710, 113.720, 113.730, 113.750, 113.780, 113.810, 113.860,
113.1040, 113.1090, 113.1130, 113.1190, 113.1200, 113.1300, 113.1390**

Statutory Authority

The amendments and new sections are adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC. The amendments and new sections are also adopted under Texas Healthy and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act; and THSC, §382.051, concerning Permitting Authority of the Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act.

The adopted amendments and new sections implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051.

§113.100. General Provisions (40 Code of Federal Regulations Part 63, Subpart A).

The General Provisions for the National Emission Standards for Hazardous Air Pollutants for Source Categories as specified in 40 Code of Federal Regulations (CFR) Part 63, Subpart A, are incorporated by reference as amended through December 4, 2015 (80 FR 75817), with the following exceptions.

(1) The language of 40 CFR §63.5(e)(2)(i) is amended to read as follows: The executive director will notify the owner or operator in writing of approval or intention to deny approval of construction or reconstruction within 180 calendar days after receipt of sufficient information to evaluate an application submitted under 40 CFR §63.5(d). The 180-day approval or denial period will begin after the owner or operator has been notified in writing that the application is complete. The executive director will notify the owner or operator in writing of the status of the application, that is, whether the application contains sufficient information to make a determination, within 90 calendar days after receipt of the original application and within 60 calendar days after receipt of any supplementary information that is submitted.

(2) The language of 40 CFR §63.6(i)(12)(i) is amended to read as follows: The executive director will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 60 calendar days after receipt of sufficient information to evaluate a request submitted under 40 CFR §63.6(i)(4)(i) or (i)(5). The 60-day approval or denial period will begin after the owner or operator has been notified in writing that the application is complete. The executive director will notify the owner or operator in writing of the status of the application, that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted.

(3) The language of 40 CFR §63.6(i)(13)(i) is amended to read as follows: The executive director will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 60 calendar days after receipt of sufficient information to evaluate a request submitted under 40 CFR §63.6(i)(4)(ii). The 60-day approval or denial period will begin after the owner or operator has been notified in writing that the application is complete. The executive director will notify the owner or operator in writing of the status of the application, that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted.

(4) The language of 40 CFR §63.6(i)(13)(ii) is amended to read as follows:

When notifying the owner or operator that the application is not complete, the executive director will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 30 calendar days after they are notified of the incomplete application, additional information, or arguments to the executive director to enable further action on the application.

(5) The language of 40 CFR §63.8(e)(5)(ii) is amended to read as follows: The

owner or operator of an affected source using a Continuous Opacity Monitoring System (COMS) to determine opacity compliance during any performance test required under §63.7 and described in §63.6(d)(6) shall furnish the executive director two or, upon request, three copies of a written report of the results of the COMS performance evaluation under this paragraph. The copies shall be provided at least 30 calendar days before the performance test required under §63.7 is conducted.

(6) The language of 40 CFR §63.9(i)(3) is amended to read as follows: If, in

the executive director's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the executive director will approve the adjustment. The executive director will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 30 calendar days of receiving sufficient information to evaluate the request.

(7) The language of 40 CFR §63.10(e)(2)(ii) is amended to read as follows:

The owner or operator of an affected source using a COMS to determine opacity compliance during any performance test required under §63.7 and described in §63.6(d)(6) shall furnish the executive director two or, upon request, three copies of a written report of the results of the COMS performance evaluation conducted under §63.8(e). The copies shall be furnished at least 30 calendar days before the performance test required under §63.7 is conducted.

§113.120. Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (40 Code of Federal Regulations Part 63, Subpart G).

The Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart G, is incorporated by reference as amended through February 27, 2014 (79 FR 11228).

§113.190. Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 Code of Federal Regulations Part 63, Subpart N).

The Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks Maximum Achievable Control Technology standard as

specified in 40 Code of Federal Regulations Part 63, Subpart N, is incorporated by reference as amended through February 27, 2014 (79 FR 11228).

§113.200. Ethylene Oxide Emissions Standards for Sterilization Facilities (40 Code of Federal Regulations Part 63, Subpart O).

The Ethylene Oxide Emissions Standards for Sterilization Facilities Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart O, is incorporated by reference as amended through February 27, 2014 (79 FR 11228).

§113.290. Secondary Lead Smelting (40 Code of Federal Regulations Part 63, Subpart X).

The Secondary Lead Smelting Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart X, is incorporated by reference as amended through January 3, 2014 (79 FR 367).

§113.300. Marine Tank Vessel Loading Operations (40 Code of Federal Regulations Part 63, Subpart Y).

The Marine Tank Vessel Loading Operations Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart Y, is incorporated by reference as amended through December 1, 2015 (80 FR 75178).

§113.320. Phosphoric Acid Manufacturing Plants (40 Code of Federal Regulations Part 63, Subpart AA).

The Phosphoric Acid Manufacturing Plants Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart AA, is incorporated by reference as amended through August 19, 2015 (80 FR 50386).

§113.330. Phosphate Fertilizers Production Plants (40 Code of Federal Regulations Part 63, Subpart BB).

The Phosphate Fertilizers Production Plants Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart BB, is incorporated by reference as amended through August 19, 2015 (80 FR 50386).

§113.340. Petroleum Refineries (40 Code of Federal Regulations Part 63, Subpart CC).

The Petroleum Refineries Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart CC, is incorporated by reference as amended through July 13, 2016 (81 FR 45232).

§113.350. Off-Site Waste and Recovery Operations (40 Code of Federal Regulations Part 63, Subpart DD).

The Off-Site Waste and Recovery Operations Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart DD, is incorporated by reference as amended through March 18, 2015 (80 FR 14248).

§113.380. Aerospace Manufacturing and Rework Facilities (40 Code of Federal Regulations Part 63, Subpart GG).

The Aerospace Manufacturing and Rework Facilities Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart GG, is incorporated by reference as amended through August 3, 2016 (81 FR 51114).

§113.430. Primary Aluminum Reduction Plants (40 Code of Federal Regulations Part 63, Subpart LL).

The Primary Aluminum Reduction Plants Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart LL, is incorporated by reference as amended through October 15, 2015 (80 FR 62390).

§113.450. Wool Fiberglass Manufacturing at Area Sources (40 Code of Federal Regulations Part 63, Subpart NN).

The Wool Fiberglass Manufacturing at Area Sources Generally Available Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart NN, is incorporated by reference as adopted July 29, 2015 (80 FR 45280).

§113.560. Generic Maximum Achievable Control Technology Standards (40 Code of Federal Regulations Part 63, Subpart YY).

The Generic Maximum Achievable Control Technology Standards as specified in 40 Code of Federal Regulations Part 63, Subpart YY, is incorporated by reference as amended through October 8, 2014 (79 FR 60898).

§113.610. Mineral Wool Production (40 Code of Federal Regulations Part 63, Subpart DDD).

The Mineral Wool Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart DDD, is incorporated by reference as amended through July 29, 2015 (80 FR 45280).

§113.640. Pharmaceuticals Production (40 Code of Federal Regulations Part 63, Subpart GGG).

The Pharmaceuticals Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart GGG, is incorporated by reference as amended through February 27, 2014 (79 FR 11228).

§113.660. Flexible Polyurethane Foam Production (40 Code of Federal Regulations Part 63, Subpart III).

The Flexible Polyurethane Foam Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart III, is incorporated by reference as amended through August 15, 2014 (79 FR 48073).

§113.670. Group IV Polymers and Resins (40 Code of Federal Regulations Part 63, Subpart JJJ).

The Group IV Polymers and Resins Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart JJJ, is incorporated by reference as amended through March 27, 2014 (79 FR 17340).

§113.690. Portland Cement Manufacturing Industry (40 Code of Federal Regulations Part 63, Subpart LLL).

The Portland Cement Manufacturing Industry Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart LLL, is incorporated by reference as amended through July 25, 2016 (81 FR 48356).

§113.700. Pesticide Active Ingredient Production (40 Code of Federal Regulations Part 63, Subpart MMM).

The Pesticide Active Ingredient Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart MMM, is incorporated by reference as amended through March 27, 2014 (79 FR 17340).

§113.710. Wool Fiberglass Manufacturing (40 Code of Federal Regulations Part 63, Subpart NNN).

The Wool Fiberglass Manufacturing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart NNN, is incorporated by reference as amended through July 29, 2015 (80 FR 45280).

§113.720. Manufacture of Amino/Phenolic Resins (40 Code of Federal Regulations Part 63, Subpart OOO).

The Manufacture of Amino/Phenolic Resins Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart OOO, is incorporated by reference as amended through October 8, 2014 (79 FR 60898).

§113.730. Polyether Polyols Production (40 Code of Federal Regulations Part 63, Subpart PPP).

The Polyether Polyols Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart PPP, is incorporated by reference as amended through March 27, 2014 (79 FR 17340).

§113.750. Secondary Aluminum Production (40 Code of Federal Regulations Part 63, Subpart RRR).

The Secondary Aluminum Production Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart RRR, is incorporated by reference as amended through June 13, 2016 (81 FR 38085).

§113.780. Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (40 Code of Federal Regulations Part 63, Subpart UUU).

The Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units Maximum Achievable Control Technology standard as specified in

40 Code of Federal Regulations Part 63, Subpart UUU, is incorporated by reference as amended through July 13, 2016 (81 FR 45232).

§113.810. Ferroalloys Production: Ferromanganese and Silicomanganese (40 Code of Federal Regulations Part 63, Subpart XXX).

The Ferroalloys Production: Ferromanganese and Silicomanganese Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart XXX, is incorporated by reference as amended through June 30, 2015 (80 FR 37366).

§113.860. Manufacturing of Nutritional Yeast (40 Code of Federal Regulations Part 63, Subpart CCCC).

The Manufacturing of Nutritional Yeast Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart CCCC, is incorporated by reference as amended through February 27, 2014 (79 FR 12228).

§113.1040. Cellulose Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart UUUU).

The Cellulose Products Manufacturing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart UUUU, is incorporated by reference as amended through February 27, 2014 (79 FR 11228).

§113.1090. Reciprocating Internal Combustion Engines (40 Code of Federal Regulations Part 63, Subpart ZZZZ).

The Reciprocating Internal Combustion Engines Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart ZZZZ, is incorporated by reference as amended through February 27, 2014 (79 FR 11228).

§113.1130. Industrial, Commercial, and Institutional Boilers and Process Heaters Major Sources (40 Code of Federal Regulations Part 63, Subpart DDDDD).

The Industrial, Commercial, and Institutional Boilers and Process Heaters Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart DDDDD, is incorporated by reference as amended through November 20, 2015 (80 FR 72790).

§113.1190. Brick and Structural Clay Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart JJJJJ).

The Brick and Structural Clay Products Manufacturing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart JJJJJ, is incorporated by reference as adopted October 26, 2015 (80 FR 65470).

§113.1200. Clay Ceramics Manufacturing (40 Code of Federal Regulations Part 63, Subpart KKKKK).

The Clay Ceramics Manufacturing Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart KKKKK, is incorporated by reference as amended through December 4, 2015 (80 FR 75817).

§113.1300. Coal- and Oil-Fired Electric Utility Steam Generating Units (40 Code of Federal Regulations Part 63, Subpart UUUUU).

The Coal- and Oil-Fired Electric Utility Steam Generating Units Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart UUUUU, is incorporated by reference as amended through April 6, 2016 (81 FR 20172).

§113.1390. Polyvinyl Chloride and Copolymers Production Area Sources (40 Code of Federal Regulations Part 63, Subpart DDDDDD).

The Polyvinyl Chloride and Copolymers Production Area Sources Generally
Available Control Technology standard as specified in 40 Code of Federal Regulations
Part 63, Subpart DDDDDD, is incorporated by reference as amended through February 4,
2015 (80 FR 5938).